

REPRESENTATIVE FOR PETITIONER:

William Faulkner, DuCharme, McMillen & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:

Richard R. Smith, Wells County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Alexin, LLC,)	Petition No.: 90-004-13-1-7-00001
)	
Petitioner,)	Business Tangible Personal Property
)	
v.)	County: Wells
)	
Wells County Assessor,)	Township: Harrison
)	
Respondent.)	Assessment Year: 2013

Appeal from the Final Determination of the
Wells County Property Tax Assessment Board of Appeals

December 17, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Petitioner’s 2013 tax abatement was denied because it filed its Certified Deduction Application and underlying Business Tangible Personal Property Return late. The abatement’s designating body, the Common Council for the City of Bluffton (Council),

passed a resolution waiving the Petitioner's non-compliance. While the Respondent agrees that the designating body has the authority to waive the Petitioner's late filing of the Certified Deduction Application, the Respondent disagrees that the designating body has the authority to waive the late filing of the underlying Business Tangible Personal Property Return. Does the Council have that authority?

PROCEDURAL HISTORY

2. The Petitioner filed a Form 130 petition with the Wells County Assessor appealing the denial of the Petitioner's tax abatement for the March 1, 2013, assessment.¹ On September 27, 2013, the Wells County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner's appeal. The Petitioner timely filed a Form 131 petition with the Board. The Board has jurisdiction over this appeal pursuant Ind. Code § 6-1.1-1-15 and Ind. Code § 6-1.5-4-1.
3. On September 18, 2014, Administrative Law Judge Joseph Stanford (ALJ) held a hearing on the petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:
 - For the Petitioner: William Faulkner, DuCharme, McMillen & Associates,²
Tom Horter, President of Alexin, LLC.
 - For the Respondent: Richard R. Smith, Wells County Assessor,
Beth Singleton, Wells County Deputy Assessor.
5. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit A: Business Tangible Personal Property Return (Form 104),
and attachment,
 - Petitioner Exhibit B: Business Tangible Personal Property Assessment Return
(Form 103), and attachments (CONFIDENTIAL),

¹ "Tax abatement" is a term commonly used to refer to a deduction from the assessed valuation of property located in a designated economic revitalization area.

² Mr. Faulkner testified that he is the Director of Property Tax for DuCharme, McMillen & Associates. He indicated on the Power of Attorney filed in this appeal that he is a Certified Public Accountant.

Petitioner Exhibit C: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2007-12, and attachment,
 Petitioner Exhibit D: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2011-9,
 Petitioner Exhibit E: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2011-10,
 Petitioner Exhibit F: Ind. Code § 6-1.1-12.1-11.3,
 Petitioner Exhibit G: Ind. Code § 6-1.1-12.1-5.4,
 Petitioner Exhibit H: *Wayne Metals, LLC, v. Wells Co. Ass'r*, (Ind. Bd. of Tax Rev. pet. no. 90-012-12-1-7-00002, October 22, 2013),
 Petitioner Exhibit I: Resolution No. 2013-9, Resolution Waiving Certain Non-Compliance, adopted by the Common Council for the City of Bluffton on September 3, 2013,
 Petitioner Exhibit J: Letter from Tom Horter to the Board.³

6. The Respondent submitted the following exhibits:

Respondent Exhibit A: Business Tangible Personal Property Return (Form 104), and attachment,
 Respondent Exhibit B: Business Tangible Personal Property Assessment Return (Form 103) and attachments (CONFIDENTIAL),
 Respondent Exhibit C: Claim for Exemption of Air or Water Pollution Control Facilities (Form 103-P) (CONFIDENTIAL),
 Respondent Exhibit D: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2007-12, and attachment,
 Respondent Exhibit E: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2011-9
 Respondent Exhibit F: Compliance with Statement of Benefits Personal Property (CF-1) for Resolution 2011-10,
 Respondent Exhibit G: Equipment List for New Additions to ERA Deduction, Personal Property in Economic Revitalization Area (Form 103-EL) (CONFIDENTIAL),
 Respondent Exhibit H: Copy of exterior of envelope from Alexin, LLC, to Richard Smith,
 Respondent Exhibit I: Schedule of Deduction from Assessed Valuation, Personal Property in Economic Revitalization Area (Form 103-ERA) (CONFIDENTIAL),
 Respondent Exhibit J: Resolution No. 2013-9, Resolution Waiving Certain Non-Compliance, adopted by the Common Council for the City of Bluffton on September 3, 2013.

7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 petition with attachments,

³ The same exhibit also appears as the first page of the Petitioner's exhibit package, unmarked.

Board Exhibit B: Hearing notice, dated July 31, 2014,
Board Exhibit C: Hearing sign-in sheet.

8. The business personal property in question is located at 1390 South Adams Street in Bluffton. Neither the Board nor the ALJ inspected the property.
9. The PTABOA determined an assessed value of \$7,151,920. The value of the denied tax abatement is \$4,831,660. Thus, the Petitioner requests an assessment of \$2,320,260.

ADMINISTRATIVE REVIEW AND THE PARTIES' BURDENS

10. Generally, a taxpayer seeking review of an assessing official's determination must make a *prima facie* case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
11. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
12. If the taxpayer makes a *prima facie* case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

FINDINGS OF FACT

13. The relevant facts are not in dispute. The Council approved a tax abatement on new manufacturing equipment for the Petitioner. For the March 1, 2013, assessment date, the Petitioner filed a business personal property return package reporting a depreciable asset assessed value of \$7,151,920 and an abatement deduction of \$4,831,660, for a final assessed valuation of \$2,320,260. *Smith testimony; Faulkner testimony; Horter testimony; Pet'r Ex. B, C, D, E; Resp't Ex. B, C, D, E, F, G.*

14. The Petitioner admits, and the Respondent agrees, that the Petitioner's return package, which also included the statement of benefits and deduction schedules related to the tax abatement, was not timely filed. While the filing deadline was May 15, 2013, the Petitioner's return package was not filed until May 21, 2013. The Petitioner did not request an extension of time to file. *Smith testimony; Faulkner testimony; Horter testimony; Pet'r Ex. B, C, D, E; Resp't Ex. B, C, D, E, F, G, H.*
15. With the knowledge that assessing officials lack the authority to waive the late filing, the Petitioner pursued a waiver of non-compliance from the designating body, the Council. On September 3, 2013, the Council passed Resolution 2013-9 waiving the Petitioner's "former non-compliance with respect to the timing of the filing of the CF-1's dated May 21, 2013." Further, the Council resolved that the Petitioner's tax abatement is "approved as requested in the Statement of Benefits originally approved on November 13, 2007." The Petitioner therefore contends that it is entitled to the abatement. *Smith testimony; Faulkner argument; Horter argument; Pet'r Ex. I; Resp't Ex. J.*
16. However, on September 27, 2013, the PTABOA issued a decision denying the Petitioner's tax abatement. The Respondent argues that while the Council's resolution specifically waives the Petitioner's non-compliance as to the filing of its abatement forms, it makes no mention of waiving the Petitioner's late-filed underlying personal property return. Moreover, the relevant statute, Ind. Code § 6-1.1-12.1-11.3, does not grant the Council any specific authority to waive the late filing of the underlying returns. Statutes must be given their plain, ordinary, and unambiguous meaning. Because the tax abatement forms must be filed with a timely-filed personal property return, the abatement should be denied. *Smith argument; Bd. Ex. A; Pet'r Ex. F, I; Resp't Ex. J.*

CONCLUSIONS OF LAW

17. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs

in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person gets an extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.

18. Additional documentation must be attached to the return to claim a tax abatement. Specifically, to obtain a deduction, a taxpayer must file a verified deduction schedule, or Form 103-ERA, with a timely-filed personal property return. Ind. Code § 6-1.1-12.1-5.4. Further, the taxpayer must submit a statement of benefits (Form CF-1) and, if applicable, a new equipment listing (Form 103-EL) with a timely-filed personal property return.
19. The parties agree that neither the tax abatement forms nor the underlying personal property return were timely filed. Nevertheless, the General Assembly has vested in the designating body, in this case the Council, the discretion to waive non-compliance through resolution. Specifically, Ind. Code § 6-1.1-12.1-11.3 states that a designating body may by resolution waive non-compliance, which includes the failure to timely file a deduction application pursuant to Ind. Code § 6-1.1-12.1-5.4. *See also* Ind. Code § 6-1.1-12.1-9.5; 50 IAC 4.2-11.1-7(a)(5).
20. The Petitioner pursued the waiver, and the Council granted it. The Respondent argues, however, that the Council not only failed to waive the late-filing of the underlying personal property return, but lacks the authority to do so. Consequently, the Respondent argues the Petitioner's abatement should be denied. The Board, however, disagrees.
21. Indiana Code § 6-1.1-12.1-11.3 provides that a designating body may waive noncompliance as to the filing for a tax abatement as follows:

(a) This section applies only to the following requirements:

.....

- (5) Failure to file a:
 - (A) timely; or
 - (B) complete;deduction application under section 5, 5.3, or 5.4 of this chapter.

.....

(c) A designating body may by resolution waive noncompliance described under subsection (a) under the terms and conditions specified in the resolution. Before adopting a waiver under this subsection, the designating body shall conduct a public hearing on the waiver.

Ind. Code § 6-1.1-12.1-11.3.

22. The legislature did not specifically include personal property returns among the items for which a designating body can waive a late filing. In application, however, this provision leaves some ambiguity. Indiana Code § 6-1.1-12.1-11.3(a)(5) allows the designating body to *waive an incomplete or late filing* of a deduction application under Ind. Code § 6-1.1-12.1-5.4. And Ind. Code § 6-1.1-12.1-5.4(a)(1) and (2) clearly require that the deduction application be filed *with* a timely filed or timely amended personal property return.
23. Statutes that are not ambiguous are not subject to being construed. *See Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001); *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 653 (Ind. Ct. App. 1966). Where a statute is susceptible to more than one interpretation, as it is in this case, the statute is ambiguous. In such a case, the intent of the legislature must be ascertained and the statute interpreted to effectuate that intent. *Aboite*, 762 N.E.2d at 257. “[I]n construing Indiana Code § 6-1.1-4-12, this Court will interpret the statute as a whole, and not overemphasize a strict literal or selective reading of its individual words.” *Id.* (citing *Gen. Motors Corp. v. Indiana Dep't of Workforce Dev.*, 671 N.E.2d 493, 497 (Ind. Ct. App. 1996)). Furthermore, where a statute is susceptible to more than one interpretation, it is appropriate to consider the consequences of a particular construction. *Herff Jones v. State Bd. of Tax Comm'rs*, 512 N.E.2d 485, 490-91 (Ind. Tax Ct. 1987).
24. The Board can only surmise the reasons the General Assembly did not specifically mention personal property returns among the items in Ind. Code § 6-1.1-12.1-11.3. Nonetheless, the General Assembly's intent in enacting Ind. Code § 6-1.1-12.1-11.3 is

clear. They intended to give a designating body the ability to waive the late filing for a tax abatement, thereby approving the abatement.

25. Again, Ind. Code § 6-1.1-12.1-5.4(a)(1) and (2) are clear in that the deduction schedule and personal property return are to be filed *together* to claim tax abatement. The Respondent's interpretation would render Ind. Code § 6-1.1-12.1-11.3 ineffectual, even though the legislature clearly has given designating bodies the authority to waive late filings for abatements.
26. In this case, the Council did just that through its resolution. The Respondent failed to point to any authority, and the Board is not aware of any, that gives the PTABOA the authority to overrule the designating body's resolution. Furthermore, the Respondent cited no authority for the harsh penalty he claims should result from filing the tax return late.

SUMMARY OF FINAL DETERMINATION

27. The Council acted within its authority in passing a resolution waiving the Petitioner's non-compliance. The Board finds the Respondent's interpretation of Ind. Code § 6-1.1-12.1-11.3 is contrary to legislative intent. Further, the Board finds no authority for the PTABOA to effectively overturn a resolution passed by a designating body. The Board therefore finds for the Petitioner. The abatement must be allowed in the amount claimed, which was \$4,831,660.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.